

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TOMMY FLOYD PRICE #619599

§

v.

§

CIVIL ACTION NO. 6:07cv162

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Tommy Price, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The case was originally filed as a habeas corpus petition, but was construed for all purposes as a civil rights lawsuit because Price's claims did not affect the fact or legality of his confinement.

Price complains of a hold in the amount of \$1,400.00 which was placed on his inmate trust account, saying that he was wrongly charged with extortion but that the money had been sent to him by his daughter for "family business." The Magistrate Judge ordered the prison officials to furnish records relevant to Price's claims and allowed Price to file a response to these records.

After review of the pleadings and records, the Magistrate Judge issued a Report on October 5, 2007, recommending that the lawsuit be dismissed with prejudice as frivolous. The Magistrate Judge noted that Price had previously sought habeas corpus relief on the extortion case which formed the basis of the hold, and that such relief was denied. *See Price v. Director, TDCJ-CID*, civil action no. 6:05cv349 (E.D.Tex., dismissed February 22, 2006, no appeal taken). In that

proceeding, the Court also concluded that Price's claim regarding the forfeiture of the money should be dismissed with prejudice because Price has an adequate state post-deprivation remedy.

In the present case, the Magistrate Judge determined that Price's claim concerning the forfeiture of the money was the very one which had been dismissed with prejudice in the prior proceeding. The Magistrate Judge therefore concluded that Price's claim on this point was barred by the doctrine of *res judicata*. Furthermore, the Magistrate Judge said, Price's claim is without merit in any event because he has an adequate state post-deprivation remedy. Finally, the Magistrate Judge stated that Price had received pre-deprivation process, in the form of the disciplinary hearing, and the finding of guilt in this proceeding was upheld through the state administrative review procedure as well as in the federal habeas corpus proceedings. The Magistrate Judge therefore recommended that Price's lawsuit be dismissed as frivolous.

Price received a copy of the Magistrate Judge's Report on October 16, 2007, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in the case and the Report of the Magistrate Judge, and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 19th day of November, 2007.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE